

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 18R 0356 & 19R 0439

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Westridge Lot 89 Block 0 60 x 125.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$102,800 for tax years 2018 and 2019.
3. Bel Fury Investments Group (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$75,400 for tax year 2018 and \$92,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$102,800 for tax years 2018 and 2019.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on February 27, 2020, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Scott W. Bloemer was present at the hearing for the Taxpayer.
8. Larry Thomson (the Appraiser) was present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission’s review of the determination of the County Board of Equalization is de novo.²
11. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

² See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.” *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

sufficient competent evidence to justify its action.”³ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴

12. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer argues the Subject Property is in “Fair” condition and there is no reason it should be valued higher than comparable properties. One particular property located at 3730 Cornhusker Drive was singled out as being “substantially similar” to the Subject Property but was assessed lower. The Taxpayer provided a spreadsheet with the property at 3730 Cornhusker Drive as well as two other properties deemed as comparable. The Taxpayer made “market adjustments” to the comparable properties to arrive at a conclusion that the Subject Property is being valued at a higher price per square foot than the comparables.
17. The Appraiser stated the comparable properties provided by the Taxpayer for the 2018 tax year are in different neighborhoods and would have a different valuation model than the Subject Property.
18. The Taxpayer provided one sale of a comparable property at 3314 S 88th Street that sold in February of 2016. The comparable is from the same neighborhood as the Subject Property and is the same age and within 52 total square foot as the Subject Property; however, the comparable property is a Tri Level home as compared to the Subject Property being a Raised Ranch. Different style homes will be valued differently in the

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

Marshall and Swift costing manuals.⁹ The Commission was not convinced the Subject Property was being valued unfairly for tax year 2018.

19. The Taxpayer provided a spreadsheet with four comparable properties for the 2019 tax appeal to show the Subject Property was being valued at a higher price per square foot than similar properties. The Taxpayer made “Market Adjustments” to the comparable properties and adduced that the Subject Property is being overvalued. Although the Taxpayer may have knowledge of the local market, the adjustments being made to the comparable properties are not an accepted appraisal method and are not USPAP compliant. The Commission is unable to quantify the adjustments being made to the comparable properties.
20. The Commission analyzed the comparable properties that were provided and found that only one of the properties had the same quality and condition rating of “Fair” and “Fair” as the Subject Property. The price per square foot of the comparable with the same quality and condition rating was \$88.32 whereas the Subject Property’s price per square foot is \$84.21.
21. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
22. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2018 and 2019 are affirmed.
2. The taxable value of the Subject Property for tax years 2018 and 2019 is:

Land	\$ 19,600
<u>Improvements</u>	<u>\$ 83,200</u>
Total	\$102,800

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

⁹ See, e.g., *Marshall & Swift Residential Cost Handbook*, Fair 01 – Fair 22 (Dec. 2017). See also Neb. Rev. Stat. § 77-5016(3) (Reissue 2018), 442 Neb. Admin. Code Ch. 5 § 031.02 (2011).

5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax years 2018 and 2019.
7. This Decision and Order is effective on July 10, 2020.

Signed and Sealed: July 10, 2020

James D. Kuhn, Commissioner